IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 610 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJENDRASINGH ALIAS KAKE S/O RAMSINGH SARDAR

Versus

PRESIDING OFFICER & ASSISTANT COMMISSIONER

Appearance:

1. Special Criminal Application No. 610 of 2002

MS BANNA S DUTTA for Petitioner No. 1

MR ANIL S DAVE for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

RULE NOT RECD BACK for Respondent No. 3

MR VM PANCHOLI, APP for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/02/2003

ORAL JUDGEMENT

#. The petitioner has challenged the order of externment passed by the Deputy Commissioner of Police, Ahmedabad City at Annexure-A. By the said order, the petitioner is externed from Ahmedabad City, Ahmedabad (Rural), Gandhinagar, Mahesana and Kheda. The said order was challenged before the appellate authority. However, the appellate authority has also confirmed the said order. The petitioner, therefore, filed this petition challenging the order at Annexure-B and the order at Annexure-C which is of the appellate authority.

#. At the time of hearing of this petition, learned advocate for the petitioner submitted that the show cause notice issued to the petitioner under Section 59 which is at Annexure-A - page 10 is absolutely vague. In the show cause notice, the authority has given the particulars about the activities of the petitioner, in which, it is stated that the petitioner is very headstrong person and he is using deadly weapons in casual manner and he is harassing innocent people; he is also in the habit of committing robbery and the area of operation is also mentioned at serial No.4 in the show cause notice. It is also mentioned that, four cases under the Criminal Procedure Code are also lodged against the petitioner. The said notice was not replied by the petitioner, and, subsequently, the impugned order at Annexure-B was passed and the same is confirmed by the appellate authority.

#. It is argued by the learned advocate for the petitioner that in the show cause notice, no particulars are given about four cases. It is submitted that even though in the show cause notice, it is mentioned that the said four cases are under the Criminal Procedure Code, ultimately, in the final order, it is mentioned that the said cases are under the Bombay Prohibition Act. It is submitted that, at least, the authority was required to give particulars about four cases, so that, the petitioner could have given effective reply to the show cause notice. It is submitted that, the notice is accordingly vague, as, no particulars are given about the aforesaid four cases. It is also submitted that, issuance of the show cause notice is not idle formality, but all particulars are required to be given in the show cause notice. In this connection, reference is required to be made to the Division Bench judgment of this Court reported in the case of Rajput Ranjitsing Jatubha v. Vinay Vyas, Sub-Divisional Magistrate, Palanpur & Others, reported in 1986 (1) GLR 478. In the said judgment, this Court has observed as under:-

" ....

A mere look at the allegations shows that they suffer from the vice of vagueness viz. (i) no period is mentioned during which the alleged nefarious activities have been carried on by the petitioner and (ii) no area or location is shown where such activities are carried on. These infirmities must be treated to be fatal infirmities. It must, therefore, be held that the petitioner got no reasonable opportunity to show cause against the proposed externment on the allegations contained in the aforesaid show cause notice.

...."

Considering the aforesaid aspect of the matter and considering the fact that no particulars are given about the aforesaid four cases and coupled with the fact that even though the said cases were under the Bombay Prohibition Act, reference was made that the said cases are under the Criminal Procedure Code. On the aforesaid ground, the show cause notice suffers from vagueness and nonapplication of mind. Therefore, in view of the infirmity in the show cause notice by which the petitioner is denied the opportunity of giving appropriate reply, the externment order at Annexure-B, which is confirmed by the appellate authority at Annexure-C are required to be quashed and set aside. Accordingly, both the orders are quashed and set aside. The petition is allowed. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(P.B.Majmudar,J)
(pathan)